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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 GERRY RENEE POTTS,) Case No.: 1:21-cv-0625- JLT
12 Plaintiff,)
13 v.) ORDER GRANTING PLAINTIFF’S MOTION
14 ANDREW SAUL,) TO PROCEED INFORMA PAUPERIS
Commissioner of Social Security,) (Doc. 2)
15 Defendant.) ORDER DISMISSING COMPLAINT WITH
16) LEAVE TO AMEND
_____)

17 Gerry Renee Potts seeks to proceed *in forma pauperis* with an action for judicial review of the
18 administrative decision denying an application for Social Security benefits. Pending before the Court
19 are the complaint (Doc. 1) and a motion to proceed *in forma pauperis* filed by Plaintiff (Doc. 2). For
20 the following reasons, the request to proceed *in forma pauperis* is **GRANTED**, and the complaint
21 **DISMISSED** with leave to amend.

22 **I. Proceeding in forma pauperis**

23 The Court may authorize the commencement of an action without prepayment of fees “by a
24 person who submits an affidavit that includes a statement of all assets such person . . . possesses [and]
25 that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a). The Court
26 reviewed the information provided in the affidavit and finds Plaintiff satisfies the requirements of 28
27 U.S.C. § 1915(a). Therefore, Plaintiff’s request to proceed *in forma pauperis* is **GRANTED**.

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1 **II. Screening Requirement**

2 When an individual seeks to proceed *in forma pauperis*, the Court is required to review the
3 complaint and shall dismiss a complaint, or portion of the complaint, if it is “frivolous, malicious or
4 fails to state a claim upon which relief may be granted; or . . . seeks monetary relief from a defendant
5 who is immune from such relief.” 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2). A plaintiff’s claim
6 is frivolous “when the facts alleged rise to the level of the irrational or the wholly incredible, whether or
7 not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S.
8 25, 32-33 (1992).

9 **III. Pleading Standards**

10 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A
11 pleading must include a statement affirming the court’s jurisdiction, “a short and plain statement of the
12 claim showing the pleader is entitled to relief; and . . . a demand for the relief sought, which may
13 include relief in the alternative or different types of relief.” Fed. R. Civ. P. 8(a). A complaint must
14 give fair notice and state the elements of the plaintiff’s claim in a plain and succinct manner. *Jones v.*
15 *Cnty Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984). The purpose of the complaint is to
16 give the defendant fair notice of the claims against him, and the grounds upon which the complaint
17 stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The Supreme Court noted,

18 Rule 8 does not require detailed factual allegations, but it demands more than an
19 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
20 labels and conclusions or a formulaic recitation of the elements of a cause of action will
not do. Nor does a complaint suffice if it tenders naked assertions devoid of further
factual enhancement.

21 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague
22 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,
23 268 (9th Cir. 1982). The Court clarified further,

24 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim
25 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when
26 the plaintiff pleads factual content that allows the court to draw the reasonable
27 inference that the defendant is liable for the misconduct alleged. [Citation]. The
28 plausibility standard is not akin to a “probability requirement,” but it asks for more than
a sheer possibility that a defendant has acted unlawfully. [Citation]. Where a complaint
pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of
the line between possibility and plausibility of ‘entitlement to relief.’”

1 *Iqbal*, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should
 2 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal
 3 conclusions are not entitled to the same assumption of truth. *Id.* The Court may grant leave to amend a
 4 complaint to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*,
 5 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

6 **IV. Discussion and Analysis**

7 Plaintiff seeks review of a decision by the Commissioner of Social Security denying disability
 8 benefits. (Doc. 1.) The Court would have jurisdiction pursuant to 42 U.S.C. § 405(g), which provides
 9 in relevant part:

10 Any individual, after any final decision of the Commissioner made after a hearing to
 11 which he was a party, irrespective of the amount in controversy, may obtain a review of
 12 such decision by a civil action commenced **within sixty days after the mailing to him**
 13 **of such decision or within such further time as the Commissioner may allow.** Such
 14 action shall be brought in the district court of the United States for the judicial district
 15 in which the plaintiff resides, or has his principal place of business . . . The court shall
 16 have power to enter, upon the pleadings and transcript of the record, a judgment
 17 affirming, modifying, or reversing the decision of the Commissioner of Social Security,
 18 with or without remanding the cause for a rehearing.

16 *Id.* (emphasis added).

17 Except as provided by statute, “[n]o findings of fact or decision of the Commissioner shall be
 18 reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h). The Supreme Court
 19 noted the purpose of the legislation was “to forestall repetitive or belated litigation of stale eligibility
 20 claims.” *Califano v. Sanders*, 430 U.S. 99, 108 (1977). Thus the regulations operate as a statute of
 21 limitations a claimant to appeal a final decision of the Commissioner. *Bowen v. City of New York*, 476
 22 U.S. 467, 479 (1986); *Matthews v. Eldridge*, 424 U.S. 319, 328 n. 9 (1976)). Because the time limit is
 23 “a condition on the waiver of sovereign immunity,” it “must be strictly construed.” *Id.*

24 Plaintiff asserts that he “has exhausted all administrative remedies.” (Doc. 1 at 2.) However,
 25 Plaintiff fails to allege any facts that support this legal conclusion. For example, Plaintiff fails to
 26 explain if or when he filed a request for review by the Appeals Council, whether the Appeals Council
 27 addressed his request for review, when such notice was received, or any information regarding the
 28 timeliness of his administrative remedies and the complaint filed before the Court. Without additional

1 facts, the Court is unable to determine whether it has jurisdiction over Plaintiff's request for judicial
2 review under Section 405(g), or whether Plaintiff's action is time-barred.

3 **V. Leave to Amend the Complaint**

4 If the Court determines that a complaint fails to state a claim, leave to amend should be granted
5 to the extent that the deficiencies of the complaint can be cured by amendment. *Lopez v. Smith*, 203
6 F.3d 1122, 1130 (9th Cir. 2000) (en banc). A complaint, or a portion thereof, should only be
7 dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that
8 the plaintiff can prove no set of facts, consistent with the allegations, in support of the claim or claims
9 that would entitle him to relief. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984), citing *Conley*
10 *v. Gibson*, 355 U.S. 41, 45-46 (1957); *see also Palmer v. Roosevelt Lake Log Owners' Ass'n., Inc.*,
11 651 F.2d 1289, 1294 (9th Cir. 1981).

12 The Court cannot find with certainty that Plaintiff cannot allege facts supporting a
13 determination that the request for review is timely and the Court has jurisdiction over the matter. The
14 Court will grant Plaintiff leave to amend the complaint to cure the deficiencies of this complaint.
15 Failure to cure the deficiencies will result in a recommendation that the matter be dismissed. The
16 amended complaint must bear the docket number assigned this case and must be labeled "First
17 Amended Complaint." Accordingly, the Court **ORDERS**:

- 18 1. Plaintiff's motion to proceed *in forma pauperis* (Doc. 2) is **GRANTED**;
- 19 2. Plaintiff's complaint is **DISMISSED** with leave to amend; and
- 20 3. Plaintiff is **GRANTED** 14 days from the date of service of this order to file an amended
21 complaint that complies with the requirements of the pertinent substantive law, the
22 Federal Rules of Civil Procedure, and the Local Rules of Practice.

23
24 IT IS SO ORDERED.

25 Dated: April 17, 2021

26 /s/ Jennifer L. Thurston
CHIEF UNITED STATES MAGISTRATE JUDGE